

FILED

AUG 28 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RODOLFO TIRADO-JACOBO,

Defendant - Appellant.

No. 05-50658

D.C. No. CR-05-00103-SJO-1

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
S. James Otero, District Judge, Presiding

Submitted August 21, 2006^{**}

Before: GOODWIN, REINHARDT, and BEA, Circuit Judges.

Rodolfo Tirado-Jacobo appeals from the 48-month prison sentence imposed following his guilty-plea conviction for being found in the United States following deportation in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm and remand.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Tirado-Jacobo contends that his sentence is unconstitutional because the enhancement he received for a prior conviction under § 1326(b) was not based on facts found by a jury. His contention is foreclosed. *See United States v. Weiland*, 420 F.3d 1062, 1079 n.16 (9th Cir. 2005) (holding that we are bound to follow *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), even though it has been called into question, unless it is explicitly overruled by the Supreme Court).

Tirado-Jacobo next contends that the district court's imposition of a supervised release condition that requires him to report to his probation officer within 72 hours of re-entry into the United States violates the Fifth Amendment. This contention is also foreclosed. *See United States v. Rodriguez-Rodriguez*, 441 F.3d 767, 772-73 (9th Cir. 2006) (holding that the imposition of this supervised release condition does not violate the Fifth Amendment privilege against self-incrimination because the reporting requirement does not compel an admission of criminal activity).

In accordance with *United States v. Rivera-Sanchez*, 222 F.3d 1057, 1062 (9th Cir. 2000), we remand the case to the district court with instructions that it delete from the judgment the incorrect reference to § 1326(b)(2). *See United States v. Herrera-Blanco*, 232 F.3d 715, 719 (9th Cir. 2000) (remanding sua sponte to delete the reference to § 1326(b)).

We therefore **AFFIRM** the sentence and **REMAND** to the district court for the sole purpose of excising the reference to 8 U.S.C. § 1326(b)(2) from the judgment.